



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

MEMO

19 January 2007

From: Elaine Douskey, Supervisor, IDNR/UST Section
To: Iowa UST Installers
Re: **Energy Policy Act (EPAAct), Secondary Containment**

The Iowa DNR UST Section is currently waiting for approval from the legislature to implement the federal Energy Policy Act (EPAAct) provision related to secondary containment for USTs. The requirements for secondary containment will have significant implications for tank installation projects for which your companies oversee.

As you may be aware, the EPAAct calls for states to enact requirements for one of two choices in order to maintain funding and state program approval:

- 1) Secondary containment (double walled systems) at facilities located within 1,000 feet of a public water supply system, **or**
- 2) Require certification and financial responsibility (FR) for installers, and FR for manufacturers of UST equipment.

The federal deadline for states to enact this provision is February 8, 2007. Further details on these and other EPAAct provisions can be found in the Environmental Protection Agency (EPA) guidelines at: http://www.epa.gov/oust/fedlaws/epact_05.htm#Drafts

The Department will propose that the legislature adopt the secondary containment requirement rather than the FR requirement. While presently we cannot provide firm guidelines since Iowa has not passed legislation for secondary containment, the DNR strongly recommends going with double walled systems for their added measure of safety in release prevention.

In brief, the secondary containment provision requires secondary containment (double walled tank and product piping, transition sumps, dispenser pans) if installed within 1,000 feet of a public water supply system or any potable water well. The requirement also includes leak detection monitoring of the double walled system. These changes would apply to new tank installations and to existing UST systems only when tanks, piping or dispensers are replaced.

The EPA is well aware of the barriers states have in implementing the provisions – one being the schedule of various states' legislative activities vs. deadlines imposed in the federal EPAAct. That is the case for Iowa. Although the federal deadline is firm, the EPA has for the most part been flexible with states in an effort to foster a smooth transition nationally. We have submitted our requests for legislative changes, which includes backing the provision to require secondary containment (vs. FR), again for its environmental soundness. But it is unknown at this point whether the Iowa legislature will support the secondary containment option or the FR option. Additionally, it is unknown what the effective date for any new regulations will be.

We have been in contact with EPA personnel to help clarify some of our concerns. Currently, there is no federal regulation requiring secondary containment, only a federal requirement that states must implement such a program or risk losing federal funding to the state's UST program. As such, until a state passes legislation, an owner/ operator is not required to use a double walled system. States have the option of making the requirement retroactive, i.e., regardless of the effective rule date, we could require all systems installed after February 8, 2007 to be secondarily contained. Although we can't be certain what the legislation will dictate, it is doubtful we will support a retroactive requirement.

Be mindful that Iowa Code section 455B.474(1)(f)(9) requires secondary containment or "other Board approved systems" for all UST system upgrades or replacements at contaminated sites classified as high or low risk. The Iowa UST Board rules require secondary containment on all tank replacements at high or low risk sites in an area defined as "environmentally sensitive" which includes sites within 100 feet of drinking water wells or sites with porous soils. See Iowa Code section 455B.474.1(f)(9) and UST Fund Board rules at 591 Iowa Administrative Code 11.4.

We hope this memo provides you with some additional clarification regarding secondary containment at new installations to assist you in making a decision about whether to install single- or double-walled tanks. We will provide further information as it becomes available.